UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

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GAVRIL BUDAI, et al., : CASE NO. 1:06-CV-1338

Plaintiffs, : JUDGE JAMES S. GWIN

vs. : OPINION AND ORDER

[Resolving Docs. 8, 9, 15 & 16.]

MICHAEL CHERTOFF, et al.,

Defendants.

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## JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On May 31, 2006, Plaintiffs Gavril and Veronica Budai filed a Petition for Writ of Mandamus. [Doc. 1.] Plaintiffs sought an order from the Court "requiring Defendants to adjudicate Plaintiffs' application for adjustment of status."

Applying for an employment-based adjustment of status is a three-step process. Plaintiffs successfully completed the first two stages of this process. On July 11, 2002, the Department of Labor approved Creative Stone's Application for Employment Certification on behalf of Gavril Budai, the first step in the employment-based adjustment of status process. On February 6, 2003, the U.S. Immigration and Naturalization Service ("INS") approved Creative Stone's Immigrant Petition for Alien Worker on behalf of Gavril and Veronica Budai, the second step in the employment-based adjustment of status process. On September 2, 2003, Plaintiffs filed Applications to Register Permanent Residence or Adjust Status with the INS, the third and final step in the adjustment of status process. Prior to the filing of this case, Plaintiffs alleged that virtually no action

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had been taken to adjudicate their Applications to Register Permanent Residence or Adjust Status

for over two years.

On August 14, 2006, the defendants filed a Motion to Dismiss, or in the alternative Motion

to Remand to USCIS. [Doc. 8.] On August 16, 2006, Plaintiffs filed a Memorandum in Opposition

to the Motion to Dismiss. [Doc. 9.]

On November 17, 2006, the Court held a Case Management Conference. [Doc. 13.] At this

conference, the parties informed the Court that on November 16, 2006, the United States

Immigration and Citizenship Service ("USCIS") had issued a Notice of Intent to Revoke Creative

Stone's previously approved Immigrant Petition for Alien Worker filed on behalf of Gavril and

Veronica Budai. This approved Immigrant Petition for Alien Worker was a necessary underlying

requirement that permitted adjudication of Plaintiffs' Applications to Register Permanent Residence

or Adjust Status.

The plaintiffs advised the Court that they would oppose revocation of the previously

approved Immigrant Petition for Alien Worker. Plaintiffs provided the Court with a courtesy copy

of their Response to the Notice of Intent to Revoke, dated December 15, 2006. On February 2,

2007, the plaintiffs filed a Motion to Continue Deadline for Submission of Stipulated Record until

the USCIS had issued a final decision regarding the Notice of Intent to Revoke. [Doc. 15.]

Both parties have now informed the Court that the USCIS has revoked Creative Stone's

previously approved Immigrant Petition for Alien Worker filed on behalf of the plaintiffs.

Additionally, on February 15, 2007, Plaintiffs' counsel, Olga Y. Zullig, filed a Motion to Withdraw

Appearance as Counsel. [Doc. 16.]

Given that the USCIS has issued a final decision revoking the Immigrant Petition for Alien

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Worker, Plaintiffs may have some right to appeal that decision through proper administrative

channels. However, the plaintiffs' Applications to Register Permanent Residence or Adjust Status,

which are the subject of the Petition for Writ of Mandamus in the instant case, are no longer ripe for

adjudication before the USCIS.

As such, the Court **DISMISSES** the instant case without prejudice. Likewise, the Court

**DENIES AS MOOT** Defendants' Motion to Dismiss, or in the alternative Motion to Remand to

USCIS (Doc. 8); Plaintiffs' Motion to Continue Deadline for Submission of Stipulated Record (Doc.

15); and Plaintiffs' Motion to Withdraw Appearance as Counsel (Doc. 16).

IT IS SO ORDERED.

Dated: February 28, 2007

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

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